

**ENTERED**

April 21, 2025

Nathan Ochsner, Clerk

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

CHIVA CHAPA,

Plaintiff,

VS.

MARTIN O'MALLEY, *et al.*,

Defendants.

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CIVIL ACTION NO. 2:24-CV-00131

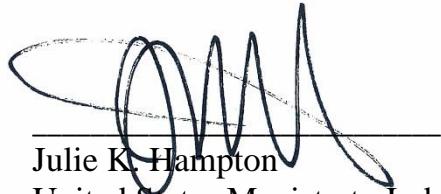
**MEMORANDUM & RECOMMENDATION**

On January 3, 2025, pursuant to sentence four of 42 U.S.C. § 405(g), the Commissioner's determination that Plaintiff Chiva Chapa was not disabled was vacated and Plaintiff's case was remanded to the Social Security Administration for further consideration of her application for benefits (D.E. 13). Now pending is Chapa's motion for attorney's fees brought pursuant to the Equal Access to Justice Act ("EAJA"), 28 U.S.C. § 2412(d) (D.E. 17). The Commissioner is unopposed to the motion. (D.E. 18). For the reasons discussed further below, it is recommended that the motion (D.E. 17) be **GRANTED**.

The undersigned specifically concludes that Chapa is the prevailing party, the position of the United States was not substantially justified, and there are no special circumstances that make an award of fees unjust. 28 U.S.C. § 2412(d)(1)(A). Moreover, the 39.1 hours spent by counsel, the cost-of-living adjustment, and the \$9,391.43 in fees and \$405 in costs requested are appropriate and reasonable.

Accordingly, it is recommended that the application for EAJA fees (D.E. 17) be **GRANTED**. It is further recommended that Chapa's attorney of record be awarded the sum of \$9,391.43 in attorney's fees pursuant to the EAJA and \$405 in costs, paid separately from the judgment fund. In accordance with *Astrue v. Ratliff*, 560 U.S. 586, 591-98 (2010), the attorney fee award should be made payable to Plaintiff, Chiva Chapa, and mailed in care of her attorney, Michael T. Kelly.

Respectfully submitted on April 21, 2025.



Julie K. Hampton  
United States Magistrate Judge

**NOTICE TO PARTIES**

The Clerk will file this Memorandum and Recommendation and transmit a copy to each party or counsel. Within FOURTEEN (14) DAYS after being served with a copy of the Memorandum and Recommendation, a party may file with the Clerk and serve on the United States Magistrate Judge and all parties, written objections, pursuant to Fed. R. Civ. P. 72(b), 28 U.S.C. § 636(b)(1), General Order No. 2002-13, United States District Court for the Southern District of Texas.

A party's failure to file written objections to the proposed findings, conclusions, and recommendation in a magistrate judge's report and recommendation within FOURTEEN (14) DAYS after being served with a copy shall bar that party, except upon grounds of plain error, from attacking on appeal the unobjected-to proposed factual findings and legal conclusions accepted by the district court. *Douglass v. United Servs. Auto Ass'n*, 79 F.3d 1415 (5th Cir. 1996) (*en banc*).